IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 3817 of 2005

Between:

1 Divisional Forest Officer, Kothagudem, Khammam District.
2 The Conservator of Forests, Khammam Circle, Khammam.
3 Principal Chief Conservator of FOrests, Government of Andhra PRadesh, Aranya Bhavan, Hyderabad-500 022.
4 The Government of Andhra Pradesh, Rep. by its Secretary, General Administration Department, Secretariat, Hyderabad-500 022.

..... PETITIONERS

AND

L. Madhusudhan Rao Forester (Removed)
R/o. H.No. 1-6-95/17, Jubleepura Street, Near Jublee High School, Khammam.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or direction more particularly one in the nature of "WRIT OF CERITIORARI" calling for the records connected with order dt. 23-11-2004 in O.A. No.1157 of 2002 on the file of the Hon'ble Andhra Pradesh Administrative Tribunal, Hyderabad and quash the same as illegal and erroneous.

Counsel for the Petitioner:GP FOR SERVICES I

Counsel for the Respondent: P.V.RAMANA

The Court at the admission stage made the following :

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ORDER: (Per the Hon'ble Sri Justice G.Bikshapathy)

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This writ petition is filed by the Government challenging the order dated 23-11-2004 in O.A.No. 1157 of 2002 passed by the A.P.Administrative Tribunal, Hyderabad.

2. The respondent is an applicant before the Tribunal. He filed O.A.No.1157 of 2002 assailing the order passed by the Divisional Forest Officer, Kothagudem in Rc.No. 2767/96/S1, dated 19-5-1997 imposing the punishment of stoppage of 5 annual grade increments with cumulative effect besides recovery of Government Losses of Rs.64,726/- and the orders passed by the Conservator of Forests in Rc.No.5087/97-Ml, dated 11-7-2001 imposing the punishment of dismissal from service and the orders passed by the Principal Chief Conservator of Forests in No.33300/2001/L2, dated 19-11-2001 modifying the punishment to that of removal from service as arbitrary and illegal.

3. The respondent was working as Forester. While so, he was issued with a charge sheet, dated 7-12-1996 with the following charges:

1. *Neglect of duty with mollified intention.*

    a. *By not depositing Government funds in the Joint account (Bank) there by causing embezzlement of Government money of Rs.10,000/-*

    b. *By false expenditure and producing fabricated vouchers without executing the work amounting to embezzlement*

of Government money of Rs.54,726/-

c. *By not maintaining the muster rolls and non- payment of wages Rs.4865/- to the labourers, resulting in embezzlement of the amount.*

2. Misappropriation of Rs. 580/- collected towards "C" fees by not issuing C.F.140 receipt to the accused.

4. Thereafter, an enquiry was conducted. Ultimately the respondent was found guilty of the charges and accordingly the disciplinary authority namely the Divisional Forest Officer, Kothagudem by his proceeding dated 19-5-1997 imposed the punishment of stoppage of five annual grade increments with cumulative effect besides recovery of Government loss of Rs.64,726/-. Against the said order of punishment, the respondent filed an appeal before the Appellate Authority-Conservator of Forests, Khammam. While dealing with the appeal, the Appellate Authority issued a show cause notice to the petitioner dated 4-8-2000 proposing to enhance the punishment to that of removal, to which an explanation was submitted and thereafter the appellate authority vide Proceeding Rc.No. 5087/97/M1, dated 11-7-2001 passed an order of dismissal.

5. Aggrieved by the order of dismissal, dated 11-7-2001, the respondent filed revision before the Government and the Government by order dated 19-11-2001 modified the punishment of dismissal to that of removal from service. Therefore, he approached the Tribunal assailing the order of punishment awarded to him. The Tribunal taking into consideration the fact that the appellate authority did not act independently and as he was swayed by the report of the lower authority also observing that concurrence of PSC was not obtained allowed the O.A. and directed reinstatement of the respondent. Aggrieved by the said order of Tribunal, the present writ petition has been filed by the Government.

6. The learned Government Pleader submits that the order of the Tribunal is not only illegal but also contrary to law. The Tribunal failed to see that the appellate authority has been vested with the power of the original authority to deal with the matter and that the appellate authority having noticed that the punishment awarded is lesser in nature, issued show cause notice for removal. Accordingly, passed the order of

punishment. Therefore, the Tribunal ought not have interfered with the orders passed by the appellate authority as modified by the revisional authority. The learned Government Pleader would also submits that in case of major punishments imposed by the authorities other than the Government, no approval of PSC is necessary. But, however, the Tribunal without there being any material on record, recorded a finding that PSC approval has not been obtained.

7. On the other hand, the learned counsel for the respondent submits that the very proceedings for enhancement is illegal and without jurisdiction. He also submits that aggrieved by the order of punishment, he filed an appeal before the appellate authority. The appellate authority was bound to consider the grounds of appeal in accordance with Rule 37 of Classification, Control and Appeal and Conduct Rules (for brevity "C.C.A. Rules"). and then only the appellate authority can initiate proceeding for enhancement of punishment. But, without discussing the grounds raised by the respondent, the appellate authority dismissed the appeal. It is not open for the appellate authority to enhance the punishment and such a power is only vested with the revisional or review authority under Rule 40 and not under Rule 37 of C.C.A. Rules. The learned counsel for the respondent would also submits that the appellate authority imposed major punishment after four years after filing the appeal and as such the punishment was rightly set aside.

8. The issue that arises for consideration is whether order passed by the Tribunal is sustainable in law.

9. As already referred to above, the first ground on which the Tribunal found fault with the department is that the appellate authority did not act independently and it has mainly relied on the report furnished by the disciplinary authority, which procedure is illegal and contrary to law. As far as second ground is concerned, there is no doubt that consultation with PSC is not necessary in case of awarding of major punishments by the authorities other than the Government. Therefore, it has to be seen how far the appellate authority is justified in enhancing the punishment.

10. An appeal is provided under Rule 33 of the Rules. The modalities for consideration of appeal is contained in Rule 37 of the Rules. It is also not in dispute that the appeal was filed by the aggrieved employee challenging the order of punishment imposed on him. While considering the appeal, the appellate authority is required to make specific findings on the points referred to in Sub-Rule 2 of Rule

37.

11. When the appellate authority intends to enhance the punishment, a notice is required to be issued under Sub-Rule 5 of the Rules. Rule 37 is extracted for better appreciation of the case.

> *Rule 37. Consideration of appeal:- 1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 8 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.*
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> *(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 9 or Rule 10 or enhancing any penalty imposed under the said rules, the appellate authority shall consider:-*
>
> a. *Whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in failure of justice.*
>
> b. *Whether the findings of the disciplinary authority are warranted by the evidence on the record; and*
>
> c. *Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe and pass orders;*
>
> iv. *confirming, enhancing, reducing or setting aside the penalty; or*
>
> i. *remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;"*

12. In the case on hand, the appellate authority is required to come to its own conclusion as to whether the findings arrived at by the disciplinary authority are justified or as to whether the penalty imposed is adequate or inadequate.

13. We find from the show cause notice dated 21-8-2000 that the appellate authority had given a go-bye to various grounds raised by the respondent and holding that for the charge of misappropriation, enhanced punishment ought to have been given. It is noticed that the respondent has challenged the original punishment itself. In such a situation, the appellate authority is required to consider the grounds raised by the

respondent and whether the appellate authority agrees with the grounds or rejects the grounds have to be meted out in the appeal. But, apparently, there is no such discussion at all for arriving at such a consideration. Thus, we find that the procedure laid down under Rule 37 of the Rules has been grossly violated by the appellate authority. Though, the appellate authority has got power to enhance the punishment by providing an opportunity to the respondent by issuing a notice for enhancement of the punishment. It is duty of the appellate authority to consider the grounds and then only reject the appeal. Though in the same proceedings he came to a conclusion that it requires enhancement of punishment, but, without considering the grounds raised by the respondent, it simply enhanced the punishment. Hence, the enhanced punishment is illegal and contrary to law. Even though the learned Tribunal has came to a conclusion that the appellate authority did not act independently, yet we find another flaw in the order that the very approach of the appellate authority does not form Rule 37 of C.C.A. Rules

13. Under those circumstances, we do not find any illegality or irregularity in the order of the Tribunal.

14. Accordingly, the Writ Petition is dismissed. No order as to costs.

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G.Bikshapathy,J.

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P.S.Narayana, J.

9th March, 2005

KM/TJS

AS SISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 Divisional Forest Officer, Kothagudem, Khammam District.
2 The Conservator of Forests, Khammam Circle, Khammam.
3 Principal Chief Conservator of Forests, Government of Andhra Pradesh, Aranya Bhavan, Hyderabad-500 022.
4 The Government of Andhra Pradesh, Rep. by its Secretary, General Administration Department, Secretariat, Hyderabad-500 022.

5. 2 CCs to G.P. for Services-I, High Court Buildings, Hyderabad (OUT

6. 2 CD copies

7. 1 CC to the Registrar, A.P.A.T. , Hyderabad.

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

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9th March, 2005.